

STATE OF MICHIGAN
COURT OF APPEALS

In re FELDPAUSCH/PIETROYTYS, Minors.

UNPUBLISHED

June 11, 2015

No. 325308

Jackson Circuit Court

Family Division

LC No. 14-000171-NA

Before: RIORDAN, P.J., and DONOFRIO and BECKERING, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court order terminating her parental rights to her three minor children, KF, JP, and NP pursuant to MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm if children returned to parent). We affirm.

I. FACTUAL BACKGROUND

The children were removed from respondent's care primarily because of her continued and extensive drug use. According to the petition, on January 24, 2014, mother tested positive for the use of marijuana, opiates, acetylmorphine, hydromorphine, and morphine. The petition also documented her history of heroine abuse. Petitioner further alleged that respondent used drugs in front of KF, and allowed another drug abuser to reside in the home with the children. The children were removed from respondent's care, and eventually placed with their respective fathers.¹

During the lower court proceedings, respondent refused to attend parenting time with KF, and only sporadically attended visits with JP and NP. She did not submit to the requested psychological evaluation, nor did she complete a substance abuse assessment. She likewise failed to submit to the substance abuse screens. Respondent only attended one family team meeting. As the foster-care worker testified, respondent completely failed to address her substance abuse problem and showed no interest in complying with the Department of Human Services or the court. Respondent did not attend the termination hearing.

¹ The two younger children—JP and NP—had the same father, while the oldest child—KF—had a different father.

The trial court found that termination of respondent's parental rights was proper pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). The court further found that termination was in the children's best interests. Respondent now appeals.

II. CONSTITUTIONAL RIGHTS

A. STANDARD OF REVIEW

Respondent first contends that her constitutional rights were violated when the trial court terminated her parental rights. Because this issue was not raised below, it is unpreserved for appellate review. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011). Thus, we review the issue for "plain error affecting substantial rights." *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

B. ANALYSIS

Respondent contends that the termination order violated her constitutional rights because concerns regarding her parenting skills were rectified by virtue of the children's fathers obtaining legal and physical custody of them.² We disagree.

"A natural parent possesses a fundamental interest in the companionship, custody, care, and management of his or her child, an element of liberty protected by the due process provisions in the Fourteenth Amendment of the United States Constitution and article 1, § 17, of the Michigan Constitution." *Frowner v Smith*, 296 Mich App 374, 381; 820 NW2d 235 (2012). However, "once at least one ground for termination is proven under subsection 19b(5), . . . the parent's interest in the companionship, care, and custody of the child gives way to the state's interest in the child's protection." *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000).

Here, respondent has not asserted any error in the trial court's statutory grounds analysis. In fact, she concedes that it was "clear that [she] was unable to overcome her substance abuse problems and was unable to take advantage of the parent agency agreement." We agree and find clear and convincing evidence of the statutory grounds for termination. See *In re VanDalen*, 293 Mich App at 139. Therefore, respondent's interest in the companionship, care, and custody of her children must give way to the state's interest in protecting them. *In re Trejo*, 462 Mich at 356.

Further, respondent does not explain how her constitutional rights were violated simply because of the children's placement with their respective fathers. "A party may not merely announce his position and leave it to us to discover and rationalize the basis for his claim." *Matter of Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992). It also is well established that the Department of Human Services may seek termination of only one parent's rights. See *Matter*

² Of initial significance, we note that the record only supports that KF's legal father obtained full legal and physical custody over her during the proceedings. There is no indication that the legal father of JP and NP obtained full legal and physical custody over them.

of *Marin*, 198 Mich App 560, 568; 499 NW2d 400 (1993) (“the parental rights of one parent may be terminated without the termination of the parental rights of the other parent[.]”). Accordingly, respondent has not demonstrated error requiring reversal.

III. BEST INTERESTS

A. STANDARD OF REVIEW

Respondent next challenges the trial court’s best-interests findings. “Once a statutory ground for termination has been proven, the trial court must find that termination is in the child’s best interests before it can terminate parental rights.” *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). “[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence.” *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). “We review for clear error . . . the court’s decision regarding the child’s best interest under MCL 712A.19b(5).” *In re Olive/Metts Minors*, 297 Mich App at 40 (quotation marks and citation omitted). “A trial court’s decision is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *Id.* at 41 (quotation marks, citation, and brackets omitted).

B. ANALYSIS

“In deciding whether termination is in the child’s best interests, the court may consider the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home[.]” *In re Olive/Metts Minors*, 297 Mich App at 41-42 (internal citations omitted). A “trial court has a duty to decide the best interests of each child individually.” *Id.* at 42. That “stands for the proposition that, if the best interests of the individual children *significantly* differ, the trial court should address those differences when making its determination of the children’s best interests.” *In re White*, 303 Mich App 701, 715; 846 NW2d 61, 69 (2014) (emphasis in original). Moreover, “[a]lthough in most cases it will be in the best interests of each child to keep brothers and sisters together . . . if keeping the children together is contrary to the best interests of an individual child, the best interests of that child will control.” *In re Olive/Metts Minors*, 297 Mich App at 42.

Here, the trial court found that with the permanency of termination, stepparents could adopt the children in the future if either father remarried. The trial court found that the children deserved to be with caregivers who would provide them with permanency. The trial court reasoned that, given respondent’s utter failure to rectify any of the conditions that led to the minors’ removal, she was unable to provide a suitable environment for the children. The trial

court also concluded that the minors deserved a life free from the chaos and interruptions of respondent's inconsistent presence in their lives.³

On appeal, respondent takes issue with the fact that the children were not placed in the same home. However, the trial court was aware that the children would not be placed in one home, as the oldest child had a different father than the younger two children. Nevertheless, the trial court still found that it served each of the children's best interests for respondent's rights to be terminated because she could not provide for their needs and would instead disturb their permanency. See *In re Olive/Metts*, 297 Mich App at 42 ("if keeping the children together is contrary to the best interests of an individual child, the best interests of that child will control."). This is especially so in this case, as reuniting the minors in one home was not a viable option given respondent's total lack of improvement.

We also find that the trial court's best-interests analysis was supported by a preponderance of the evidence. The children have bonded with their respective fathers, and are in permanent and stable homes. See *In re Olive/Metts*, 297 Mich App at 41-42 (a trial court may consider the minor's need for permanency, stability, and finality). Although respondent contends that termination was not warranted because the children were in appropriate placements, this ignores significant issues of permanency and finality. Moreover, respondent completely refused to attend visitation with KF, and failed to consistently attend parenting time with NP and JP. See *In re Trejo*, 462 Mich at 364 ("The court did not clearly err by refusing to further delay permanency for the children, given the uncertain potential for success and extended duration of respondent's reunification plan."). As the trial court found, the minors should be in environments free from the uncertain presence of respondent, given her failure to make any progress toward rectifying her serious drug problem.

Accordingly, the trial court's finding that termination of respondent's parental rights was in the best interests of the minor children was not clearly erroneous. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

IV. CONCLUSION

Because respondent has failed to demonstrate that her constitutional rights were violated or that the trial court erred in its best-interests analysis, reversal is not warranted. We affirm.

/s/ Michael J. Riordan

/s/ Pat M. Donofrio

/s/ Jane M. Beckering

³ Based on the foregoing, we do not agree with respondent that the trial court failed to consider the relevant best-interests factors. See *In re Olive/Metts Minors*, *supra*.